IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 2882 of 1995
with
CRIMINAL REVISION APPLICATION No. 68 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
RAMANIKLAL PREMSHANKAR RAVAL & ANR

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Appearance :
MR SS PATEL APP for Applicant
MR KB ANANDJIWALA for Respondent No.1
MR NB TIWARI for Respondents No.2-3
MR BN DOCTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 18/09/2006

ORAL JUDGMENT

[1] Both these Criminal Revision Applications came to be filed by the State – applicant, against the judgment and order delivered by Special Judge, Ahmedabad (Rural), Ahmedabad in Special Case No.1/1991 whereby original accused No.1 – Ramniklal Premshankar Raval, accused No.5 – Yogesh alias Rajubhai Narayanbhai Patel and accused No.7 – Kamal alias Kamlesh Ambalal Raval came to be discharged for the charges levelled against them under Sections 161, 162, 465, 466, 471, 218, 204, 120B and 34 of the Indian Penal Code and for the charges levelled against them under Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947. While in the same order, accused No.11 – Manubhai Auganbhai Shah came to be discharged only for the offences charged against him in respect of Section 5(1)(d) to read with Section 5(2) of the Prevention of Corruption Act, 1947.

[2] In all, charge-sheet came to be filed against thirteen accused. Out of which original accused No.13 – Dinesh Natvarlal Shah was declared absconding and remaining twelve accused filed the applications for discharge vide Ex.30,38, 39 and 41 and learned trial Judge heard all the applications together and came to grant the applications in respect of accused Nos.1, 5 and 7 in toto, while application was partly granted so far as the accused No.11 is concerned.

[3] Criminal Revision Application No.2882/1995 is preferred by the State in respect of original accused No.1 – Ramniklal Premshankar Raval, accused No.5 – Yogesh alias Rajubhai Narayanbhai Patel and accused No.7 – Kamal alias Kamlesh Ambalal Raval who are the respondents in the said Criminal Revision Application. While Criminal Revision Application No.68/1997 has been preferred by the State in respect of accused No.11 - Manubhai Auganbhai Shah, who is respondent in the said Criminal Revision Application. Both the Criminal Revision Applications are arising from the same judgment

and order and tagged together for hearing and disposal.

[4] Learned APP Mr.S.S.Patel on behalf of the applicant – State in both the Criminal Revision Applications as well as learned senior counsel Mr.K.B.Anandjiwala for the respondent No.1 in Criminal Revision Application No.2882/1995 and learned advocate Mr.N.B.Tiwari for the respondents No.2 and 3 i.e. original accused No.5 and 7 were heard. While learned advocate Mr.B.N.Doctor for the respondent in Criminal Revision Application No.68/1997 was heard.

[5] The charge-sheet in Special Case No.1/1991 came to be filed for the aforesaid offences against all the accused. As per the brief fact which is elaborately narrated by the trial Judge in his judgment, refers to an attempt on the part of accused No.11 and absconding accused to become agriculturist in the revenue record on the strength of forged entries. As per the revenue law, who is not agriculturist, cannot own agriculture property. The fact refers to the

period from 10th August, 1982 to 12th September, 1984. It is the case of the prosecution in the charge-sheet that the accused No.11 – Manubhai Auganbhai Shah forged one entry in revenue record of village Chamla in respect of Survey No.385. According to the prosecution case, this entry was made by the then Talati one Mr.R.G.Solanki, who was not accused in the case. It is further prosecution case that accused No.11 - Manubhai Auganbhai Shah was not an agriculturist and there was no existence of Survey No.385 in respective village standing in the name of accused No.11 - Manubhai Auganbhai Shah. He further posing to be an agriculturist on the strength of this entry purchased agricultural land Block Nos.401, 410 and 412 from one Vaghji Thakor in village Chandiyel on the strength of the documents and on the strength of the entry made at village Chamla, Accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel entered entries in revenue record and those entries were certified by accused No.1 - Ramniklal Premshankar Raval being Mamlatdar in-charge of the said village Chandiyel at that

juncture and, therefore, it was the prosecution case that on account of some illegal gratification which could be inferred, obtained by accused No.1 - Ramniklal Premshankar Raval and accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel, though the entries made in the record of village : Chamla was forged, the entries came to be made in the record of village : Chandiyel was also forged and those were the forged documents. It appears that the accused No.7 - Kamal alias Kamlesh Ambalal Raval was successor Talati-Cum-Mantri of accused No.5.

[6] It is the further case of the prosecution that likewise absconding accused No.13 – Dinesh Natvarlal Shah and his father Natvarlal Shivlal Shah, though they were not agriculturists caused some entries in revenue record of village : Kaniyel in respect of Survey No.325 and in the revenue record of village : Mirzapur in respect of land Survey Nos.331/1, 320/1, 320/3 and 320/4, in collusion with the other accused, who were revenue officers and after paying illegal gratification. It was the case of the prosecution

that the entries made in the revenue record of village : Kaniyel and village : Mirzapur were made on the strength of an entry made in the revenue record of village Chandiyel, Taluka : Dascroi, vide entry No.1609 on 22nd January, 1976. It is the prosecution case that this entry No.1609 was forged one and the accused Nos.2 to 10 in collusion with accused No.13 posted entries in the revenue record of village : Kaniyel as well as in revenue record of village : Mirzapur. In this transaction, it is the prosecution case that some part was played by accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel.

[7] Learned APP Mr.S.S.Patel in both the Criminal Revision Applications vehemently urged that the entries made in the revenue record of village : Chandiyel as well as in the village : Chamla are apparently forged and illegal, made by accused and forged documents are prepared by the accused – revenue officers on the strength of forged entries. The certified copies are given even though there were over writing and erasion in original entry which is not shown in certified

copies. It is submitted that this could be done only if illegal gratification is received by the concerned revenue officers. It is, therefore, submitted that these Criminal Revision Applications be allowed and the order passed by the learned trial Judge in respect of original accused No.1, 5, 7 and 11 be set aside.

[8] As against that learned senior counsel Mr.K.B.Anandjiwala as well as learned advocate Mr.B.N.Doctor submitted that firstly, there are 2 or 3 independent transactions joined together in one charge-sheet that itself is an illegality. It is submitted that there is nothing on the record except inference by the prosecution that any of the accused, who are respondents in the Criminal Revision Applications received illegal gratification. So far as the certified copies are concerned in respect of over writing and in respect of the entries made, the opinion of handwriting expert was clear that none of those writings belonged, either to accused No.1, 5 or 7, who were revenue officers at that juncture. The involvement of accused No.5, so far as the

entries in respect of accused No.13 is concerned, is absolutely nil from the police papers. The original entries which are stated to have been forged are admittedly not made by any of the accused No.1, 5 or 7. They have made entries on the strength of earlier entries and made verification which itself may not attract any short of criminality for accused No.1, 5 and 7. It is submitted that the order passed by the trial Judge is reasoned one and after considering the overall aspects of the prosecution case, the conclusion has been arrived at which may not be disturbed in revisional jurisdiction. It is submitted that therefore, the order impugned in both the Criminal Revision Applications may not be interfered with and the Criminal Revision Applications be dismissed.

[9] Having heard learned counsels for the parties and having gone through the record including the impugned judgment and order as well as whole papers of the charge-sheet as supplied by the learned APP, it appears that each aspect of the case is elaborately dealt with by learned

trial Judge in the judgment and order impugned. The cardinal principles in respect of interference by the High Court under Section 401 of the Code of Criminal Procedure is well settled. What is to be seen in the Criminal Revision Applications by this High Court is the correctness, legality or propriety of the finding impugned in Criminal Revision Applications. Regularity of the proceedings is also a subject matter of scrutiny in Criminal Revision Applications. Such powers can also be exercised to prevent miscarriage of justice and for advancement of the cause of justice.

[10] To examine the impugned judgment and order within the scope of revisional powers, it is necessary to see that whether the findings arrived at by the subordinate Court are the findings from the facts and the record of the said case or any extraneous matters are taken into consideration. When we scanned through the papers of the charge-sheet and reasoning assigned by the learned trial Judge, it is amply clear that the findings are based on the record only

and not on extraneous grounds. Taking into consideration the police papers i.e. the papers of charge-sheet, it becomes very clear that the act which is complained of against the accused Nos.1, 5 and 7 have its root in the first entry made in the revenue record of village : Chamla in respect of Survey No.385 and admittedly, none of these three accused participated as revenue officers or otherwise, in causing that entry. So far as the consequential entry which is complained of in respect of village : Chandiyel is based on the entry made in the revenue record of village Chamla. It clearly appears that in his official duty, accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel made an entry in respect of accused No.11 in the revenue record of village Chandiyel and at the most lacking on the part of the accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel is to verify the original entry made at village : Chamla by inquiring as to whether earlier entry made in revenue record of Chamla was forged or not, but then, it was not the duty of accused No.5. This only fact of

making entry in revenue record of village Chandiyel certainly would not attach criminality on merely making entries in revenue record of village : Chandiyel by accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel. Accused No.1 – Ramniklal Premshankar Raval being Mamlatdar in his official duty certified the entry made by accused No.5 - Yogesh alias Rajubhai Narayanbhai Patel in the revenue record of village: Chandiyel in respect of accused No.11. Thereto at the most it could be said that the original entry made at village: Chamla was not verified by either accused No.5 or accused No.7 that itself would not invite the criminal liability upon these two accused. Necessary it is to refer that with those facts, prosecution comes with the case that these could not have been done without passing of illegal gratification though there is no evidence at all, admittedly that who witnessed said transaction of illegal gratification between accused No.11 on the first part and accused No.1 and 5 on the second part. What is found from the police recorded is in the shape of hear say

evidence that the witnesses came to know from the talks around that some illegal gratification was obtained by the accused No.1 and 5 in making entries in village : Chandiyel, except these two circumstances, admittedly, there is no evidence against the accused No.1 and 5. So far as the entries made in revenue record of village: Chandiyel in respect of accused No.11 is concerned, while accused No.7 appears to have given certified copies of the revenue record, thereafter and was not in service even when these entries were made. These aspects are elaborately discussed by the trial Judge in para-29 of the judgment impugned in these Criminal Revision Applications. Admittedly it has come on record that the entry made in the revenue record of village: Chamla in respect of Survey No.385 was made by one Shri R.G.Solanki who was not joined as an accused. One more view appears from the record that at the relevant juncture, even Shri R.G.Solanki was not the concerned revenue officer in-charge of village: Chamla, when entries were made which is forged. At the same time, these

being facts emerging from the police papers when there is no evidence of any illegal gratification exhcanged between the accused No.1, 5 and 7 on the one part and accused No.11 on the second part, the learned Judge rightly observed that the accused No.11 might be tried for the other charges, but not for the charges levelled against him for the offences punishable under Section 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947.

[11] Now so far as the entries in respect of absconding accused No.13 is concerned, neither accused Nos.1, 5 nor 7 as revenue officers played any role in making those entries. This aspect is also elaborately discussed by the learned trial Judge in para-30 of the judgment and order impugned. The role to some what extent appears to have assigned to accused No.5 to the extent that he gave certified copies of the said entry No.1609 of village Chandiyel. The learned trial Judge has observed that merely because, the certified copies were given without noting the erasers made and over writing made in the

original entries would not invite criminal liability. Except this in the said transaction in respect of accused No.13 and in respect of entry No.1609 of village : Chandiyel, neither accused No.1 and accused No.5 nor accused No.7 has been assigned any role in the prosecution papers.

[12] All the accused of the said Special Case preferred above applications for discharge, the learned trial Judge dismissed the applications of accused No.2, 3, 4, 6, 8, 9 and 10 and allowed the applications filed by accused No.1, 5 and 7 in toto, while application of accused No.11 was partly allowed as aforesaid. We are concerned in these Criminal Revision Applications for the orders passed in respect of the accused No.1, 5, 7 and 11. Therefore, the order impugned is discussed within the scope of revisional powers, in respect of accused No.1, 5, 7 and 11.

[13] In view of the above, it clearly appears that the discharge of accused Nos.1, 5 and 7 in toto and accused No.11 partly from the said Special Case No.1/1991 is legal, proper and based

on the record of the case. There is no cause at all in these Criminal Revision Applications to interfere with, well reason order of the trial Court in respect of these accused.

[14] Pertinent it is to take a note that remaining 7 accused, out of 13 came to be tried by Special Judge in Special Case No.1/1991 and those seven accused came to be acquitted by the learned Additional Sessions Juge i.e. Special Judge Ahmedabad (Rural) vide his judgment and order dated 3rd April, 2000. It is reported that no acquittal appeal has been preferred against the said judgment of acquittal of seven accused.

[15] For the reasons stated above, Criminal Revision Application No.2882/1995 as well as Criminal Revision Application No.68/1997 both stand dismissed. Rule is discharged.

(J. R. Vora,J.)

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